

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF TRANSPORTATION

In the Matter of the Application of Kay Irene Zisk, d/b/a Kay's Budget Moving, 7769 Meadow View Trail, Lino Lakes, MN 55014: Petition for Household Goods Mover Permit Authority to Transport Household Goods Between All Points in Minnesota.

**RECOMMENDED ORDER
OF DISMISSAL**

The above-entitled matter came on for hearing before the Honorable Allen E. Giles, Administrative Law Judge, at 9:30 a.m. on October 16, 1996 at the Minnesota Office of Administrative Hearings, Minneapolis, Minnesota.

The Petitioner, Kay Irene Zisk, President, Kay's Budget Moving, 7769 Meadow View Trail, Lino Lakes, Minnesota 55014, appeared pro se, Protestant Douglas B. Bester, Manager, Bester Brothers Transfer and Storage Company, Inc. (hereinafter also referred to as "Bester Brothers"), 818 North Concord Street, South St. Paul, Minnesota 55075-1194; appeared pro se, and Protestant Douglas T. Harrison, President, Harco Moving, Inc., 5350 N.E. Industrial Boulevard, Suite #1A, Fridley, Minnesota 55421, appeared pro se.

The record in this proceeding closed on October 16, 1996 at the close of the hearing.

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, the Rules of Practice of the Public Utilities Commission as applicable to the Minnesota Department of Transportation, and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Commissioner of Transportation, 395 John Ireland Boulevard, St. Paul, Minnesota 55155. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before the Commissioner may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Commissioner.

The Commissioner of Transportation will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Commissioner may, at his own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Commissioner as his final order.

Based on the files and records contained in this proceeding, and after full consideration of the arguments of the parties, the Judge concludes that it is reasonable and appropriate to issue the following:

ORDER

The Application of Kay Irene Zisk, d/b/a Kay's Budget Moving for motor carrier operating authority to transport household goods statewide is hereby DENIED without prejudice to the Petitioner bringing a subsequent Petition.

Dated this _____ of November, 1996.

ALLEN E. GILES
Administrative Law Judge

Reported: Taped.

MEMORANDUM

Petitioner has requested statewide permit authority for transportation of household goods pursuant to Minn. Stat. § 121.121, subd. 1 (1994). The trial on the merits of this Petition was initially scheduled for June 25, 1996. Petitioner appeared at the hearing without witnesses with the intention of submitting letters from persons who apparently indicated that they would make use of the proposed transportation service. At the hearing, the Judge informed Petitioner that the letters were insufficient for the trial in that Protestants would have no opportunity for cross-examination. The Judge further pointed out that "need" in motor carrier permit applications is established by having public witnesses testify regarding the need for the proposed transportation services. Instead of dismissing the Petition, the Judge continued the hearing to give Petitioner an opportunity to assemble witnesses who would come forward in support of the Petition. The trial was continued until October 16, 1996 so that this could be accomplished.

At the hearing on October 16, 1996, Petitioner again appeared without the benefit of public witnesses. Petitioner informed the Judge that she would not produce testimony at the hearing from persons who would state that they had a need for the

proposed transportation services. A household goods mover permit cannot be issued unless there is a finding that the area to be served has a need for the transportation services requested in the petition. Minn. Stat. § 221.121, subd. 1 (1994); Five Star Trucking, Inc. v. Minnesota Transportation Regulation Board, 370 N.W.2d 666, 670 (Minn. App. 1985).

The Judge informed Petitioner that a presentation without public witnesses expressing a desire to use the proposed transportation service would fail to establish an essential element or precondition to issuance of the requested operating authority. Therefore, the Judge informed Petitioner that he would issue an Order denying the permit for failure to bring in witnesses to testify regarding their need for the service and for failure to comply with the previous Order continuing the hearing to allow Petitioner to assemble witnesses in support of the Petition.

It is noted that the dismissal is **without prejudice** so that Petitioner may bring another petition when she is more prepared to prove the requirements for issuance of a permit.